

IN THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION

In Re:

CHRIS E. CARHART,

Case No. 9:16-bk-06499-FMD

Debtor.

/

**MOTION TO SELL PROPERTY OF THE ESTATE FREE
AND CLEAR OF PURPORTED LIENS AND INTERESTS**

A preliminary hearing in this case will be held on **May 10, 2018 at 11:30 a.m.** in Fort Myers Federal Building and Federal Courthouse, Room 4-117, Courtroom E, 2110 First Street, Fort Myers, Florida 33901 to consider and act upon the following or this matter and transact such other business that may come before the Court: **Motion to Sell Property of the Estate Free and Clear of Purported Liens and Interests.**

1. The hearing may be continued upon announcement made in open court without further notice.
2. Appropriate Attire – You are reminded that Local Rule 5072-1(b)(16) required that all persons appearing in court should dress in business attire consistent with their financial abilities. Shorts, sandals, shirts without collars, including tee shirts and tank tops, are not acceptable.
3. Avoid delays at courthouse security checkpoints. You are reminded that Local Rule 5073-1 **restricts the entry of cellular telephones** and, except in Orlando, computers into the courthouse absent a specific order of authorization issued beforehand by the presiding judge. Due to heightened security procedures, persons must present photo identification to enter the courthouse.

COMES NOW the Trustee in the above-styled case, ROBERT E. TARDIF JR., files this Motion to Sell Property of the Estate Free and Clear of Liens and Interests and moves this Court pursuant to 11 U.S.C. §§ 105 and 363(f) and Rule 6004 for an Order authorizing the sale of property of the estate by private sale free and clear of liens and interests and states as follows:

1. The Debtor filed this bankruptcy case on July 29, 2016. Robert E. Tardif Jr., has been appointed as Trustee to administer the case.
2. **Property:** Trustee proposes to sell the bankruptcy estate's interest in the following property: **3512 White Eagle Drive, Naperville, Illinois** – Lot 809 in White Eagle Club, Unit 22, Index No. 07-01-04-103-023-0000. The Estate has a 50% interest in the property, which is jointly-owned with the Debtor's non-filing spouse, Kexin Carhart.
3. **Purchaser:** The proposed purchaser is Daniel Georgievski, his permitted assigns or designees. To the Trustee's knowledge the purchaser does not have any relationship to the Debtor or any other party in interest. The purchase and sale agreement with attachments is 13 pages so the Trustee is not attaching the agreement to this motion in order to reduce mailing costs. The Trustee will provide a complete copy of the agreement to any party in interest that

makes a request and provides an email address to receive a copy.

4. **Price:** The selling price is \$750,000.00. The Trustee has not had the property appraised. However, the Trustee and Mrs. Carhart retained a real estate agent, who has indicated that the selling price represents the current fair market value for the property in its present condition. The Trustee, after due diligence, believes the selling price is fair and reasonable given the time frame the Court provided to the Trustee to sell the property.

5. The following appear to have an interest in the properties to be sold by the Trustee:

Parties in Interest	Nature of Interest	Amount
Bank of America	Mortgage Lien	Approx. \$420,000.00
Hinshaw & Culbertson	Judgment Lien	Approx. \$333,600.00
Kexin Carhart	Joint Owner	50% Interest in Property

6. Section 363(f) of the Bankruptcy Code provides, in pertinent part, that: "the trustee may sell property . . . free and clear of any interest in such property and of an entity other than the estate, only if – (2) such entity consents; or (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; or (4) such interest is in bona fide dispute;"

7. With regard to the above Parties in Interest, the Trustee believes that the necessary requirements for a sale free and clear of liens and interests exist by stating the following:

- a. **Bank of America** – The bank has a first priority lien against the property by virtue of a recorded mortgage against the property. The Trustee anticipates that the bank will receive full payment. The expected net proceeds of the sale being proposed is more than the amount due to the bank so the Court can approve the sale pursuant to § 363(f)(3) with regard to this interest.
- b. **Hinshaw & Culbertson** – The Creditor sued the Debtor and received a final judgment in the approximate amount of \$333,600.00, which bears Document No. R2016015659 of the public records of Will County, Illinois. The Trustee anticipates that this Creditor will consent to the sale upon payment of a percentage of the net proceeds attributable to the Debtor's interest in the property. The current amount expected to be received by this Creditor is \$59,800.00. The Creditor will execute a release of its judgment lien.
- c. **Kexin Carhart** – The Claimant is the joint-owner of the property. The Trustee anticipates that Mrs. Carhart will consent to the sale upon the following conditions: (1) that she receive one-half of the net proceeds of sale, after payment of the mortgage, real estate commission and all closing costs and prorations; (2) that she receive from the Estate's half of the net proceeds one-half of the carrying

costs and expenses that she has paid from the filing date of this case through the date of sale, the current total amount of which is approximately \$90,415.39 (so the Estate's reimbursement would be \$45,207.70); and (3) that the Estate compensate her for the difference between the net proceeds that she would have received from a sale at \$760,000 and the amount of this proposed sale at \$750,000.00, that difference in amount being approximately \$4,500.00.

8. The sale of the property free and clear of liens of the above-named individuals and entities is in the best interests of the Debtors' estate, its creditors and other parties in interest.

9. **Terms:** The property is being sold "AS IS, WHERE IS WITH ALL FAULTS AND DEFECTS THEREIN" with no representations or warranties of any kind.

10. **Benefit to Estate:** The Trustee believes the net sales proceeds will be approximately \$19,900.00.

11. **Closing Costs:** The Trustee expects to pay the following undisputed liens, claims or costs at the closing:

- a. Commission – Joy Mulder, Coldwell Banker Residential Real Estate and any cooperating agent/broker, if any - \$37,500.00.
- b. Other reasonable and customary closing costs to the Trustee, as Seller, which may include the following:
 - i. Settlement/Closing/Title Charges (Approximately) \$ 5,545.00
 - ii. Surveying (Approximately) \$ 500.00
 - iii. Reasonable and customary closing costs not to exceed \$ 750.00
 - iv. Stamp Tax (State and County) \$ 1,125.00
 - v. 2017/2018 Taxes and/or Prorated taxes \$ 25,700.00
- c. A true and accurate copy of an estimated net sheet or closing statement is attached to this motion.

12. **Request to Waive Stay:** At the hearing on this motion the Trustee will request that the Court enter an order waiving the 14-day stays set forth in Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure and providing that the order granting this motion be immediately enforceable and that the closing under the purchase agreement may occur immediately.

WHEREFORE the Trustee moves the Court for entry of an Order authorizing the sale of the above-described property free and clear of liens and interests pursuant to Section 363(f), in accordance with the terms stated herein.

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished **Electronically** to the Assistant United States Trustee and Richard Hollander and by **Regular U.S. Mail** to Chris E. Carhart and Kexin Carhart, 621 Seaview Court P2, Marco Island, FL 34145, Hinshaw & Culbertson, LLP, c/o Brian Zeeck and Finance Department, 222 N. LaSalle St., Suite 300, Chicago, IL 60601, and Bank of America, P.O. Box 31785, Tampa, FL 33631-3785 and by **Certified Mail** to Bank of America, N.A., by serving Brian Moynihan, Chairman & CEO, 100 North Tryon Street, Suite 170, Charlotte, NC 28202 and those creditors and parties in interest on the attached matrix on April 19, 2018 that are required to be served pursuant to Local Rule 2002-1(c).

/s/ Robert E. Tardif Jr.
Robert E. Tardif Jr., Trustee
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A. Settlement Statement (HUD-1)

B. Type of Loan

1. <input type="checkbox"/> FHA	2. <input type="checkbox"/> RHS	3. <input type="checkbox"/> Conv. Unins.	6. File Number:	7. Loan Number:	8. Mortgage Insurance Case Number:
4. <input type="checkbox"/> VA	5. <input type="checkbox"/> Conv. Ins.				
C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.					
D. Name & Address of Borrower:			E. Name & Address of Seller:		F. Name & Address of Lender:
G. Property Location:			H. Settlement Agent:		I. Settlement Date:
			Place of Settlement:		

J. Summary of Borrower's Transaction

100. Gross Amount Due from Borrower	
101. Contract sales price	
102. Personal property	
103. Settlement charges to borrower (line 1400)	
104.	
105.	
Adjustment for items paid by seller in advance	
106. City/town taxes to	
107. County taxes to	
108. Assessments to	
109.	
110.	
111.	
112.	
120. Gross Amount Due from Borrower	
200. Amount Paid by or in Behalf of Borrower	
201. Deposit or earnest money	
202. Principal amount of new loan(s)	
203. Existing loan(s) taken subject to	
204.	
205.	
206.	
207.	
208.	
209.	
Adjustments for items unpaid by seller	
210. City/town taxes to	
211. County taxes to	
212. Assessments to	
213.	
214.	
215.	
216.	
217.	
218.	
219.	
220. Total Paid by/for Borrower	
300. Cash at Settlement from/to Borrower	
301. Gross amount due from borrower (line 120)	
302. Less amounts paid by/for borrower (line 220)	()
303. Cash <input type="checkbox"/> From <input type="checkbox"/> To Borrower	

K. Summary of Seller's Transaction

400. Gross Amount Due to Seller	
401. Contract sales price	
402. Personal property	
403.	
404.	
405.	
Adjustment for items paid by seller in advance	
406. City/town taxes to	
407. County taxes to	
408. Assessments to	
409.	
410.	
411.	
412.	
420. Gross Amount Due to Seller	
500. Reductions In Amount Due to seller	
501. Excess deposit (see instructions)	
502. Settlement charges to seller (line 1400)	
503. Existing loan(s) taken subject to	
504. Payoff of first mortgage loan	
505. Payoff of second mortgage loan	
506.	
507.	
508.	
509.	
Adjustments for items unpaid by seller	
510. City/town taxes to	
511. County taxes to	
512. Assessments to	
513.	
514.	
515.	
516.	
517.	
518.	
519.	
520. Total Reduction Amount Due Seller	
600. Cash at Settlement to/from Seller	
601. Gross amount due to seller (line 420)	
602. Less reductions in amounts due seller (line 520)	()
603. Cash <input type="checkbox"/> To <input type="checkbox"/> From Seller	

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

Label Matrix for local noticing
113A-9
Case 9:16-bk-06499-FMD
Middle District of Florida
Ft. Myers
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Note: Entries with a '+' at the end of the
name have an email address on file in CMECF

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